



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/773,358	02/06/2004	Kathy McCurry		6807
7590	05/04/2006		EXAMINER	
KATHY MCCURRY			POLLICOFF, STEVEN B	
FRUIT OF THE EARTH, INC.			ART UNIT	PAPER NUMBER
2520 W. IRVING BLVD., 4TH FLOOR				
IRVING, TX 75060			3728	

DATE MAILED: 05/04/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/773,358	MCCURRY ET AL.
	Examiner	Art Unit
	Steven B. Pollicoff	3728

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 06 February 2004.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-24 is/are pending in the application.
 - 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-24 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 06 February 2004 is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date: _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date: _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Drawings

The drawings are objected to because Fig 1 fails to provide section lines indicating the views of the bottle system in Figs 3-5. See CFR 1.84(h)(3). Figs 1-6 are also objected to because the shading used reduces the reproductive quality of the figures. See CFR 1.84(l)&(m). Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

The abstract of the disclosure is objected to because it is of undue length.

Correction is required. See MPEP § 608.01(b).

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-7 and 9-12 are rejected under 35 U.S.C. 102(b) as being anticipated by Fillmore et al., (US Pat 6,308,862).

With respect to claims 1-6, Fillmore discloses a bottle system, comprising a plurality of squeezable interior bottles (Fillmore Fig 1 reference number 45) operable for separately storing a plurality of materials, wherein each interior bottle includes at least one outlet (Fig 1 reference number 66) for dispensing the materials when the bottle system is squeezed by hand; a sleeve (Fig 1 reference numbers 31 and 33 in combination) slideably engaged with the interior bottles including an opening (column 4 lines 24-31; note that the opening is created once head assembly reference number 32 is removed from the assembled structure) that is positioned proximate to the outlets when engaged with the interior bottles (Fig 1 generally), a lip (Fig 5 reference number 43) along at least a portion of one end of the sleeve to assist in holding the interior bottles inside the sleeve, wherein the interior bottles are held in proximity to each other when engaged with the sleeve; a mixing nozzle (Fig 5 reference numbers 70,65 and 32

Art Unit: 3728

in combination), wherein the mixing nozzle is coupled to the opening of the sleeve proximate the outlets, includes female threads (Fig 2 reference number 63) for removably mating with a male threaded fitting (Fig 2 reference number 64) of the sleeve and the mixing nozzle is operable to receive the materials stored in the interior bottles and combine the materials to produce a mixture when the bottle system is squeezed by hand (column 2 lines 4-7).

With respect to claim 7, Fillmore discloses that each interior bottle includes at least one flat surface, and the flat surfaces are positioned adjacent to each other when the interior bottles are engaged with the sleeve (Fig 1 see middle of interior of sleeve where both bottles are positioned adjacent to each other).

With respect to claim 9, Fillmore discloses that the bottle system is adapted to combine the materials at a predetermined ratio (Fig 1 see the chamber widths reference numbers 72 and 73 in the nozzle assembly).

With respect to claim 10, Fillmore discloses that the sleeve includes marketing material disposed thereon (column 4, lines 34-35).

With respect to claim 11, Fillmore discloses that the mixture is a homogeneous mixture when the bottle system is squeezed (column 2, lines 4-7).

With respect to claim 12, Fillmore discloses a cap (Fig 1 reference number 79 and 34) for covering the mixing nozzle when the bottle system is not in use, wherein the cap includes a recess (Fig 2 see two projections extending downward from the top portion of cap reference number 79 in communication with nozzle portion reference

number 70) that is adapted to be friction fit (Fig 5 see where reference number 70 fits between two projections extending downward from cap reference number 70) with an end portion of the mixing nozzle.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 13-19 and 21-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fillmore (US Pat 6,308,862).

With respect to claims 13-19 and 21-24, it would have been an obvious method step to distribute the bottle system as described above in claims 1-12. While Fillmore does not explicitly state that its dispensing package is distributed, the reference does disclose that the package undergoes a labeling operation. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to include

distribution as a method step of the Fillmore dispenser package since Fillmore discloses that the product goes through a labeling operation. One would not likely undergo a labeling operation of a product unless there was intent to distribute it.

Claims 8 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fillmore (US Pat 6,308,862) as applied to claims 1 and 13 above and further in view of Swahl et al., (US Pat 4,838,457).

With respect to claims 8 and 20, Fillmore discloses that the interior bottles are capable of being comprised of low density polyethylene [LDP] (column 4, lines 7-9) since the reference discloses that a portion of the squeezable assembly is made of LDP. Fillmore does not disclose that the LDP is clear. However, Swahl discloses a bottle dispensing unit composed of a translucent material so that the interior can be visually inspected for the quantity of the solution available or types of solutions available for mixing (Swahl column 2, lines 60-65). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the interior bottles to be made from a clear material, as taught by Swahl, for the purpose of better inspecting the contents of the bottles.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Meurer et al., (US Pat 3,269,389) discloses a dispensing container with a plurality of squeezable bottles, a sleeve and a nozzle.

Art Unit: 3728

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven B. Pollicoff whose telephone number is (571)272-7818. The examiner can normally be reached on M-F: 7:30A.M.-4:00P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on (571)272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

SBP 4/28/06
SBP

Mickey Yu
Mickey Yu
Examination Patent Examiner
Art Unit 3728